

1
2
3
4 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 WILLIAM ROSS,

7 Plaintiff,

8 v.

9 WASHINGTON STATE DEPARTMENT
OF CORRECTIONS, et al.,

10 Defendants.

Case No. C16-5469 RJB-TLF

ORDER RE-NOTING REPORT
AND RECOMMENDATION

11
12 THIS MATTER comes before the Court on the Report and Recommendation (R&R) of
13 Judge Theresa L. Fricke, United States Magistrate Judge. Dkt. 45. The Court has reviewed the
14 R&R, the Objections filed by Plaintiff (Dkt. 46), the Response filed by Defendants (Dkt. 47), and
15 the remainder of the record.

16 In Plaintiff's Objections, Plaintiff asks that he be allowed to proceed to trial after the
17 completion of discovery, because he "was denied Discovery process and [is] waiting on Public
18 Records by the WDOC to use in his case." Dkt. 46 at 1. Plaintiff does not elaborate on what the
19 discovery might show or how said discovery would impact the pending motion for summary
20 judgment. *See id.*

21 Defendants respond to Plaintiff's Objections by arguing that (1) Plaintiff had sufficient
22 time for discovery but did not avail himself of the opportunity; and (2) discovery would be futile,
23 because Plaintiff voluntarily and admittedly chose not to pursue additional medical care. Dkt. 47.

24 Fed. R. Civ. P. 56(d) provides:

1 If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot
2 present facts essential to justify its opposition, the court may: (1) defer considering the
3 motion or deny it; (2) allow time to obtain affidavits or declarations or to take discovery;
4 or (3) issue any other appropriate order.

5 The Court construes Plaintiff's Objections as a request to defer the motion under Fed. R.
6 Civ. P. 56(d). Plaintiff has yet to receive public records he has requested, and he wishes to
7 conduct additional discovery. Because Plaintiff is pro se, the Court should exercise its discretion
8 to permit him to do so. Additional discovery and submissions should be limited in scope to the
9 claim(s) against Defendant Cory Choynet (named as Mr. Swannae) only. The R&R should be re-
10 noted for approximately 90 days to give the parties the chance to supplement the threadbare
11 record, through affidavits, deposition transcripts, or otherwise.

12 THEREFORE, it is HEREBY ORDERED:

13 The Objections to the Report and Recommendation (Dkt. 46) and the underlying Report
14 and Recommendation (Dkt. 45) are RE-NOTED for **September 15, 2017**. Plaintiff's
15 Supplemental Objections, including attachments, must be filed by Friday, September 9, 2017,
16 and Defendants' Supplemental Response to Objections must be filed by September 15, 2017.

17 Limited discovery may proceed under the following limitations:

18 (1) Discovery may be conducted only as to what occurred on the day of the incident, June
19 19, 2015, and the claim against Defendant Cory Choynet.

20 (2) Plaintiff may propound discovery to Defendant Cory Choynet.


21 (3) Plaintiff may submit affidavits of other inmates who witnessed the incident on June
22 19, 2015.

23 (4) All discovery shall be completed by September 1, 2017.

24 IT IS SO ORDERED.

25 Dated this 15th day of June, 2017.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A handwritten signature in black ink, reading "Robert J. Bryan". The signature is written in a cursive style with a horizontal line underneath it.

ROBERT J. BRYAN
United States District Judge